

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

December 18, 2007

The Rhode Island Ethics Commission held its 22nd meeting of 2007 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, December 18, 2007, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair James V. Murray
Barbara R. Binder, Vice Chair James C. Segovis
George E. Weavill, Jr., Secretary* Frederick K. Butler
Richard E. Kirby Ross Cheit**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault and Commission Investigators Steven T. Cross, Peter J. Mancini and Steven Branch.

At approximately 9:12 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open

Session held on December 4, 2007. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To approve the minutes of the Open Session held on December 4, 2007.

***Commissioner Weavill arrived at 9:15 a.m.**

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Louis Neill Gray, a member of the Newport Waterfront Commission. Staff Attorney DeVault presented the Commission Staff recommendation. She advised that the petitioner could not attend given his prior commitment relative to the special election being held in Newport today. Commissioner Cheit stated that new moorings issue strikes him as being speculative and noted that there is a huge waiting list. Staff Attorney DeVault advised that her recommendation was based on the fact that the petitioner conceded that there would be direct competition. She indicated that whether there is sufficient space in which to drop additional moorings is a broad question.

Commissioner Cheit indicated that there is more demand than supply

and referenced the ten year waiting list. Staff Attorney DeVault clarified that the ten year wait is for private moorings, whereas the petitioner has commercial moorings. She stated that the issue was a close call for her, but that the petitioner represented that it could impact him. Commissioner Cheit voiced his opinion that the impact is too speculative. Upon motion made by Commissioner Butler and duly seconded by Commissioner Binder, it was

VOTED: To issue an advisory opinion, attached hereto, to Louis Neill Gray, a member of the Newport Waterfront Commission.

AYES: George E. Weavill, Jr., Frederick K. Butler, James C. Segovis, Richard E. Kirby, James V. Murray, Barbara R. Binder and James Lynch, Sr.

NOES: Ross Cheit.

The next advisory opinion was that of John Michael Karmozyn, Jr., a member of the Burrillville Town Council. The petitioner was present, along with Town Solicitor Timothy Kane. Staff Attorney DeVault explained that the Commission recently issued an opinion to the petitioner, but that there was some confusion regarding his liaison position. She indicated that the second request would clarify the record, as the liaison position is a Town Council appointment. She informed that the Council has many liaison appointments to various civic boards and groups. She noted that in the prior opinion the

Commission found that the petitioner's general membership in the Senior Citizen's Association would not bar his participation in matters concerning the Association, but his liaison position would. She advised that the Code would not prohibit his participation in matters involving the Senior Center Task Force because his liaison position is merely an enlargement of his Council duties and his status with the Senior Citizen's Association is that of a general member. She recommended that the pending opinion supersede and replace the prior opinion to correct the record.

Solicitor Kane concurred with the Commission Staff recommendation. He noted that the Council has liaisons to various committees to observe and report back to the Council. Commissioner Weavill inquired why the petitioner would want to put himself in the situation where there could be the perception of a conflict. The petitioner replied that he does not believe there is a conflict or a perception of conflict. He advised that the Council requested that he serve as liaison to gather information and report back to the Council as needed. Solicitor Kane informed that there is no financial gain to the petitioner involved. He noted that an officer in the Senior Center Association declined to serve as liaison, but here the petitioner is not an officer.

Commissioner Weavill expressed that he would be uncomfortable with the situation, if he were a Burrillville citizen, given the enormity of the Senior Center project. Solicitor Kane represented that the

issue would go to bond for the voters to approve. In response to Commissioner Weavill, he stated that there is a small tax exemption for senior citizens, but not a tax freeze. In response to Commissioner Cheit, Solicitor Kane advised that he assisted the petitioner with the November 20th letter. Commissioner Cheit stated that he is puzzled as to the confusion regarding what it means to be the liaison. Solicitor Kane suggested that there may have been confusion that the petitioner sat on the Senior Center Study Committee. Commissioner Cheit suggested that there seems to be a misunderstanding of the description of the liaison position. Staff Attorney DeVault stated that her words describing the misunderstanding should not be attributed to the petitioner.

In response to Commissioner Kirby, the petitioner clarified that he is a liaison to the Committee, not the Association, and he is a general member of the Association. In further response, he noted that he and his father are both members of the Association. Solicitor Kane reiterated that the petitioner is a liaison to the Study Committee, not the Association. In response to Commissioner Kirby, he advised that the Council makes the appointment. Solicitor Kane informed that the Council President also serves as a liaison to the Committee and indicated his belief that she is also a senior. In response to Commissioner Weavill, the petitioner stated that there are two liaisons. Solicitor Kane noted that while the Planning and Zoning Boards each have one liaison from the Council, other entities have two. He advised that the liaison receives no additional compensation.

In response to Commissioner Butler, he suggested that there may be two liaisons due to the magnitude of the project. Commissioner Cheit stated that he is in favor of correcting any factual errors. Upon motion made by Commissioner Murray and duly seconded by Commissioner Cheit, it was

VOTED: To issue an advisory opinion, attached hereto, to John Michael Karmozyn, Jr., a member of the Burrillville Town Council.

AYES: Frederick K. Butler, Richard E. Kirby, James V. Murray, Ross Cheit, Barbara R. Binder and James Lynch, Sr.

NOES: George E. Weavill, Jr. and James C. Segovis.

The next advisory opinion was that of Stephen Hughes, a member of the Tiverton Planning Board. Staff Attorney DeVault presented the Commission Staff recommendation and noted that there are four pending requests based upon the same situation. The petitioner was not present. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Stephen Hughes, a member of the Tiverton Planning Board.

The next advisory opinion was that of John Raposa, a member of the Tiverton Planning Board. Staff Attorney DeVault presented the

Commission Staff recommendation. The petitioner was not present. Staff Attorney DeVault informed that the petitioner advised her via telephone that his father is a member of the Board of Trustees, not a member of the Board of Directors as indicated in his letter. She stated that his father is a business associate of the Club. An individual in the audience requested to be heard on the opinion and Chair Lynch declined.

Commissioner Segovis expressed his belief that the relationship is not too remote. Staff Attorney DeVault noted that the impact would be to the Yacht Club, not to the family member. Commissioner Segovis inquired regarding the difference between the Board of Directors and Board of Trustees. Staff Attorney DeVault stated that the petitioner did not provide her with further information. She advised that the Commission has not drawn any distinction between the two in prior advisory opinions and has treated both relationships as business associations. In response to Chair Lynch, the individual requesting to be heard from the audience identified himself as David Campbell, a neighbor to the Club property.

Commissioner Cheit inquired regarding the petitioner's oral representation that his father is a Trustee. Staff Attorney DeVault informed that she viewed the Club's website, which does not list the father as a member of the Board of Directors. Commissioner Cheit expressed that it is troubling that the petitioner is not here to provide information. In response to Commissioner Butler, Staff Attorney

DeVault explained that she makes no distinction between the Board of Directors and Board of Trustees in her recommendation because each constitutes a business association. Commissioner Segovis stated that he is troubled by the lack of information and would like clarification of the father's role, which could be an important distinction. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To table the advisory opinion request to obtain additional information regarding the responsibilities and duties of the Board of Trustees.

Commissioner Weavill suggested that the Commission withdraw safe harbor. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To withdraw the safe harbor letter issued to the petitioner.

The next advisory opinion was that of Peter Corr, a member of the Tiverton Planning Board. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. Commissioner Cheit inquired what kind of Club they would have if they cannot rebuild the building. Staff Attorney DeVault indicated her belief that the court is stating that they can rebuild consistent with the prior non-conforming use. Commissioner Binder questioned if the members just pay annual dues or whether they hold bonds. Staff

Attorney DeVault advised that the petitioner represented that he is a mere member and made no representation of having an ownership interest. Commissioner Binder expressed that it would be important to know what general membership entails and whether it is more akin to a country club membership.

Staff Attorney DeVault stated that the petitioner represented to her that he is a mere member who pays annual dues.

Commissioner Cheit indicated that he wants to know what is at stake for the members and voiced his discomfort that none of them are in attendance. Commissioner Kirby questioned whether there could be a distinction between this type of organization's membership and that of a club with equity. Commissioner Binder agreed. Commissioner Cheit stated that he would like to ask why the petitioner would even want to vote on it as a member of the Club. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To table the advisory opinion request and withdraw safe harbor so the petitioner may provide additional information.

The next advisory opinion was that of Cynthia Nebergall, a member of the Tiverton Planning Board. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. Upon motion made by Commissioner Segovis and duly seconded by

Commission Binder, it was unanimously

VOTED: To table the advisory opinion request and withdraw safe harbor so the petitioner may provide additional information.

In response to Legal Counsel Managhan, Staff Attorney DeVault informed that there are nine members of the Planning Board, four of whom submitted requests. She stated that five are needed for a quorum. She advised that she spoke with the Town Clerk this morning and it appears that there will not be a quorum for this evening's meeting and the matter would likely be continued to January.

At approximately 10:04 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:

a.) Motion to approve minutes of Executive Session held on December 4, 2007.

**b.) In re: Raymond E. Gallison, Jr.,
Complaint No. 2007-1**

**c.) In re: Frank A. Ciccone, III,
Complaint No. 2007-3**

**d.) William V. Irons v. Rhode Island Ethics Commission, Superior
Court C.A. No. 07-**

e.) Motion to return to Open Session.

The Commission reconvened in Open Session at approximately 11:26 a.m. and immediately recessed until 11:30 a.m. The next order of business was a motion to seal minutes of the Executive Session held on December 18, 2007. Upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously

VOTED: To seal the minutes of the Executive Session held on December 18, 2007.

Chair Lynch reported that the Commission took the following actions in Executive Session: 1) approved the minutes of the Executive Session held on December 4, 2007; 2) in the matter of In re: Raymond E. Gallison, Jr., Complaint No. 2007-1, found that probable cause exists that the Respondent violated R.I. Gen. Laws § 36-14-16 with regard to the filing of his 2000, 2001 and 2002 Financial Statements with the Commission; 3) approved an Informal Resolution & Settlement in the matter of In re: Raymond E. Gallison, Jr., Complaint No. 2007-1, and imposed a \$6,000 civil penalty; 4) continued the

matter of In re: Frank A. Ciccone, III, Complaint No. 2007-3, to January 2, 2008; and 5) received an update on William V. Irons v. Rhode Island Ethics Commission.

The next order of business was the Director's Report. Executive Director Willever advised that there are ten complaints and three advisory opinions pending. He reported that although there has been only one formal APRA request since the last meeting, it involves a significant number of records and the Staff is in the process of responding. He noted the Staff's recent participation in the State's annual SECA charity raffle. Director Willever advised that the Commission continues to have a strong education program. He indicated that the January 15th meeting will entail a full agenda and involve the discussion of regulatory matters, including a recently noted concern. Chair Lynch complimented the Staff on its participation in educational programs and wished happy holidays to all.

The next order of business was New Business. Commissioner Cheit asked to put on the record that at the January 15th meeting the Commission hopes to take the first step in addressing the issue of voting for one's self to serve as Chairperson of one's own board. At approximately 11:40 a.m., upon motion made by Commissioner Kirby and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

George E. Weavill, Jr.

Secretary